

MEMORANDUM FOR: General Counsel

22 October 1953

SUBJECT : Indications of Legalistic Approaches to Definition of Covert Activities

NSC REVIEW  
COMPLETED  
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1. Sometime last week [ ] Chief of the Plans Staff, FI, called to advise that he had gotten some indication that the Department of the Army was attempting to argue the definition of "agreed activities" as well as "covert activities" on a legal basis. [ ] stated that it was alleged that the Army JAG was doing some study on this subject. As you know, in the past there have been some attempts by certain of the military departments to approach the NSC directives on this subject from a legalistic standpoint. If at any time in the future you are seeing The Judge Advocate General you might sound him out as to whether any such study is being conducted.

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2. Slightly related to the above, was the conversation with [ ] 25X1A9A of Staff D, FI. [ ] indicated that there had been a meeting at which State Department representatives had raised the question that a classified agreement with a foreign government might partake of the nature of a treaty by virtue of being a written agreement. The point was not pressed by them but [ ] wanted some confirmation of his own viewpoint that such agreements which concerned his activities were in essence no different than any other agreements between CIA and the intelligence services of other nations and were not in any way to be considered as a treaty or legally binding on the parties. I assured him that was the general view taken by the Office of the General Counsel and that generally the courts had held that the conduct of foreign affairs including the subjects of espionage and counter-espionage are not subjects for either judicial or congressional intervention but were matters of the Department or Agency concerned in the Executive.

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3. [ ] next point concerned the question raised by another security agency of the U. S. Government which stated that by virtue of NSCID-9 it had some authority with respect to dissemination of information collected by CIA. It can be argued, of course, that NSCID-9 does conflict with certain of the fundamental principles set forth in NSCID-5. However, no such directive can override the provisions of law relating to the protection of intelligence sources and methods. [ ] was satisfied after some discussion on both of the above points and stated he was glad to get some confirmation of his own viewpoint.

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4. The above might indicate a simple problem of guardhouse lawyers or it might indicate some serious studies relating to definition of terms and jurisdictions.

Ex/Offr/DD/A:JSW:djm

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1 - DD/A Subject

✓ 2 - DD/A Chrono

JOHN S. WARNER  
Executive Officer, DD/A

~~CONFIDENTIAL~~

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